IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/08/2003

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P. No. 17532 of 2003 and W.P.No. 21451 of 2003
and
W.P.M.P. Nos. 21907, 21908, 26625 & 26626 of 2003

Minor. S.V. Bratheep,
rep. by his father and
natural guardian S. Subash ... Petitioner in WP No.
17532 of 2003

Minor. S. Kubendran, rep. by
father and Natural guardian ... Petitioner in WP No.
Shanmuganathan 21451 of 2003

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary
Higher Education Department
Chennai - 600 009

2. The Secretary
Tamil Nadu Engineering
Admissions 2003
Anna University
Chennai - 600 025

3. The Director of Technical
Education
Chennai - 600 025

4. Anna University
rep. by its Registrar ... Respondents in
Chennai 600 025 both the WPs

Petitions under Article 226 of The Constitution of India praying for a
Writ of Certiorarified Mandamus as stated therein

For Petitioner : Mr. Doraisamy, Senior Counsel
for Mr. Kandavadivel Doraisamy
in WP No. 17532 of 2003
Mr. Thankasivan in WP No. 21451

For Respondents : Mr. V.R. Rajasekaran, Special
Government Pleader (Education)
in both the Writ Petitions

:COMMON ORDER

These two writ petitions are filed seeking for a Writ of
Certiorarified Mandamus to call for the records in clause 2.4 A (ii) of
information and instructions to Candidates issued by the 2nd respondent as per
G.O.Ms. No.222, Higher Education Department dated 29-06-2002 which was
confirmed in G.O.Ms. No. 25, Higher Education Department dated 13 -02-2003
and quash the same in so far as they relate to the petitioners herein and
direct the respondents to consider them for admission, without reference to

the minimum eligible marks prescribed by the respondents 1 and 2 in the light
of advertisement issued by All India Council for Technical Education in No.
AICTE/22/ 2002 dated 02-11-2002.

2. The Government of Tamil Nadu has issued G.O.Ms. No. 222
dated 29-06-2002 prescribing minimum eligible marks namely O.C. - 60% average
marks in the related subjects, B.C.- 55% average marks, MBC/DNC - 50% average
marks in the related subjects ST - a mere pass for admission to students
belonging to different communities, into the Engineering colleges of Tamil
Nadu from the academic year 2002-2003 for B.E., B.Tech., B.Arc., Degree
Courses. Following the said G.O., the 2nd respondent herein has also
prescribed minimum eligibility marks for admission to candidates belonging to
different communities into Engineering Colleges in Tamil Nadu for the year
2003.

3. The petitioner in WP No. 17532 of 2003, who belonged to
Backward community has secured the following marks in the higher secondary
examination held in March 2003 namely Physics - 99 out of 200, Chemistry - 119
out of 200 and Mathematics 84 out of 200. In aggregate, he has secured 50.33%
of marks. Similarly, the petitioner in WP No. 21451 of 2003, who belonged to
backward community, has secured the following marks in the higher secondary
examination held in March 2003 namely Physics - 100 out of 200, Chemistry - 86
out of 200 and Mathematics 97 out of 200. In aggregate, he has secured 47.16%
of marks. Both the petitioners were not allowed to participate in the
Tamil Nadu Engineering Admission 2003, hence the writ petitions.

4. The All India Council for Technical Education has published an
advertisement dated 02-11-2002 wherein it was notified that mere pass in plus
two examination in Physics and Chemistry as compulsory subjects along with one
of the following subjects namely Chemistry, Biotechnology, Computer Science is
eligible for admission into the Engineering Colleges.

5. According to the petitioners, they have satisfied the
requirements of AICTE, but the 2nd respondent, following G.O.Ms. No. 222
dated 2 9-06-2002 prescribed norms which is against the qualification fixed by
AICTE thereby the petitioners were refused to take part in the Engineering

Admissions. It is also canvassed on behalf of the petitioners that Government of Tamil Nadu has fixed guidelines for NRI students in G.O.Ms. No. 109 dated 10-04-2002 that candidates are required to have obtained a just pass in the higher secondary examination, besides that they are exempted from appearing for Tamil Nadu Professional College Entrance Examination as per clause 2 (v). It is also canvassed that discriminatory guidelines cause undue hardship for genuine and eligible students like the petitioners depriving them from applying for technical education courses in their own State inspite of the fact that they have satisfied the requirements prescribed by AICTE.

6. The learned counsel appearing for the petitioner brought to the notice of this Court that several thousands of Engineering seats are vacant in various Colleges affiliated to Anna University/4th respondent herein. The 4th respondent/University has also issued instructions to the Engineering Colleges affiliated to it to complete the admissions on or before 14th August 2003 and submit the final list of candidates by 18th August 2003.

7. Mr. Doraisamy, learned Senior counsel appearing for the petitioner in WP No. 17532 of 2003 has relied on the decision reported in (State of Tamil Nadu and another Vs. Adhiyaman Educational & Research Institute and Others) 1995 (4) SCC 104 wherein in para-34 it was held thus:-

"34. .... However, it is equally true that when the vacancies are available for institutions or teachers or students as the case may be, the applicant cannot be denied the same on the ground that they do not fulfil the higher requirements laid down under the State Act, if they are qualified under the Central Act."

8. The learned Senior counsel also relied on the decision (Mohammad Sulahuddin Akbar Vs. The All India Council for Technical Education, rep. by its Advisor (E & T), New Delhi and 2 others) reported in 1996 TNLJ 530 - wherein, a learned Single Judge of this Court relying on the decisions of Hon'ble Supreme Court reported in (i) (Unni Krishnan Vs. State of Andhra Pradesh) AIR 1993 SC 2178, (ii) (State of Tamil Nadu and another Vs. Adhiyaman Educational & Research Institute and Others) 1995 (4) SCC 104 (iii) (T.M.A. Pai Foundation Vs. State of Karnataka) (1995) 5 SCC 220 held thus:-

"The crux of the arguments of all the petitioners as projected by Mr. R. Muthukumarasamy is that the seats now remaining vacant as on 16-10-1996 shall be allowed to be filled by the respective management according to their own standards and guidelines. I started by saying that the prayer in all the writ petitions is misconceived because the students do not get any right to get themselves admitted in any college merely because they have secured the minimum prescribed marks by AICTE. In fact, the first cardinal principal enunciated by the apex Court in Unni Krishnan's case AIR 1993 SC 2178 (supra) is that all the seats, be it free seats or payment seats in Government Colleges or Self-financing Colleges, should be filled only according to the merit list prepared by the Government. If the Government list is exhausted or is not honoured before the prescribed date, namely, 16-10-1996, the

self-financing colleges do not get a right to fill up the seats. But, they should do so only in accordance with the merit list prepared by them. In other words, they should adopt the same method by which the Government find out the meritorious candidates. That principal was never given a go by any of the above decisions cited. Therefore, it appears to me that the petitioners will be only entitled to a declaration that if any of the self-financing colleges is willing to admit the petitioners in the vacancies, they may do so, provided they have the minimum eligible marks as prescribed by AICTE. It is only here that the minimum marks prescribed by the State Government need not be enforced by the colleges."

"I am of the opinion that the only relief that can be granted in all the writ petitions is to declare that the petitioners are eligible to be considered for admission to the B.E., degree course 1996-1997, if any one of the colleges offering the course is willing to admit the students in the seats which remain vacant after 16-12-1996."

9. Mr. V.R. Rajasekaran, learned Special Government Pleader appearing for the respondents submitted that the Honourable Supreme Court of India in its judgment dated 30-10-2002 in T.M.A. Pai Foundation Versus State of Karnataka held that the Government can prescribe regulatory measures to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and prevention of mal-administration by those who are incharge of management. It is also pointed out by the learned Special Government Pleader that in the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for grant of recognition of affiliation, these conditions must pertain broadly to academic and educational matters and welfare of student and teachers, but how the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those institutions. Admission of students to unaided minority educational institutions viz., Schools and under graduate colleges where the scope for merit based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. Further, the right to admit students being a facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions. Though some private unaided professional institutions have made a request to prescribe a mere pass as has been prescribed by AICTE, the Government decided that there is no need to change the existing norms in this regard and directed to follow the orders issued in G.O.Ms. No. 222 dated 29-06-2002 and prayed for dismissal of the writ petitions.

10. It is well settled that under Article 226 of The Constitution

of India, the executive power of a State shall extend to the matter with respect to which the legislature of the State has power to make laws. An order laying down qualification for candidates to be eligible for being considered for selection for admission to a particular course, on the basis of merit specified by Regulation cannot be said to be in conflict with the Regulations of AICTE. Hence, the prescription of marks i.e., 60% for OC, 55% for BC, 50% for MBC/DNC and a just pass for SC/ST is Constitutional and Valid. Hence, the prayer sought for in these writ petitions cannot be granted.

11. The judgment relied on by the learned Senior counsel for the petitioner reported in (Mohammad Sulahuddin Akbar Vs. The All India Council for Technical Education, rep. by its Advisor (E & T), New Delhi and 2 others) 1996 TNLJ 530, wherein the similar prayer was sought for, but Kanagaraj, J held that "petitioners in that case were not eligible to seek admission in B.E., Degree course in respect of vacancies available on the ground that they had the minimum eligible marks as prescribed by AICTE". The learned Single judge after careful reference of Unnikrishnan Case, Adhiyaman case, T.M.A. Pai Foundation case held that all seats in Government Colleges or Self-financing colleges should be filled only according to the merit list prepared by the Government. If the Government list is exhausted or is not honoured before the prescribed date, the self-financing colleges do get a right to fill up the seats but they should do so adopting the same method by which the Government find out the meritorious candidates and the principle was never given a go by any of the said three decisions. The learned Single Judge has moulded the relief declaring that the petitioners are eligible to be considered for admission, if any one of the colleges offering the course is willing to admit the students in the vacancies which remain vacant after the last date. Hence, the said decisions referred above no way useful to the petitioners.

12. The Honourable Supreme Court in the judgment in (T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others) reported in AIR 2003 SC 355 held in Para Nos. 53, 54, 55, 58, 65 70 and 162-D as follows:-
"53. With regard to the core components of the rights under Articles 19 and 26 (a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government....."

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-admission by those in charge of management....

55. .....There can be no doubt that in seeking affiliation or recognition, the Board or the University or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure

the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration.....

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in this context of admissions to unaided institutions.

65. ....While an educational institution cannot grant admission on its whims and fancies and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19 (6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognised. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school.....

162-D. A. Admission to students to unaided minority educational institution viz., Schools and undergraduate colleges where the scope for merit based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institution of their choice, as contemplated under Art.30 of The Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission of the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions."

13. The Honourable Supreme Court upheld the right of the States to prescribe qualification necessary for admission. For admission into professional institution, merit must play an important role. Excellence in professional education would require that greater emphasis must be laid on the merit of a students seeking admission. Appropriate regulations for this purpose may be made and the educational institutions cannot grant admission on its whims and fancies and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified. The Honourable Supreme Court in the above decision held that the decision of Unnikrishnan's case in so far as it framed a scheme relating to grant of admission and fixing of the fee was not correct, and to that extent, the decision and the consequent directions given to UGC, AICTE, MCI, Central and State Governments etc., are overruled.

14. The State Government, in order to maintain educational standards and ensure excellence passed G.O.Ms. No. 222 dated 29-06-2002 prescribing minimum qualification which is within its purview, which was confirmed in G.O.Ms. No. 25 dated 13-02-2003 and the same was followed by the second respondent, as such no interference of this Court is warranted.

15. The arguments that the G.O.Ms. No. 109 dated 10-04-2002 fixes just pass for NRI and exempts them from appearing for T.N.P.C.E.E. is discriminatory is untenable. Article 14 of The Constitution only needs that persons similarly circumstanced should be treated alike both in privileges conferred and liability imposed. NRIs are stand in totally different footing and the exemption granted to them is perfectly valid.

16. With the result, the writ petitions are dismissed. No costs. Connected WPMPs are closed.

17. It is brought to the notice of this Court that 1/4th of seats are unfilled and some of the unaided engineering colleges are facing the threat of closure and if the minimum marks prescribed by AICTE is followed, the remaining seats could be utilised and the institutions be saved from

closure. The Government is at liberty to take a decision considering the total numbers unfilled seats and demand for the same from the candidates who satisfy the conditions prescribed by AICTE in respect of minimum qualification and pass orders at earliest to avoid the perils of lapse of seats and closure of the institutions.

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Index : Yes
Internet : Yes

To

1. The Secretary to Government
Government of Tamil Nadu
Higher Education Department
Chennai - 600 009

2. The Secretary
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Admissions 2003
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